FILE COPY

FILED
DEC 29 193
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 600

KEZIAH REED, GEORGIANA R. SIMPSON, LILLIAN M. H. REDDING, INFANT, BY HER NEXT FRIEND, LEWIS H. REDDING; MARGARET M. REDDING, INFANT, BY HER NEXT FRIEND, LEWIS H. REDDING, ET AL., PETITIONERS,

vs.

LORENZO ALLEN.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

J. WILMER LATIMER,
Guardian ad Litem for Infant Petitioners, in Propria Persona.
WALTER C. CLEPHANE,
GILBERT L. HALL,
Counsel for Adult Petitioners.

(36,414)

INDEX.

Subject Index.

	Page
Petition for writ of certiorari:	
Summary statement of the matter involved	1
Question presented	4
Reasons relied on for the allowance of the writ	5
Prayer for writ	5
Brief in support of petition:	
Argument	7
Conclusion	17

Table of Cases Cited.

Cromwell v. County of Sac, 94 U. S. 351	10
Hart Steel Co. v. Railroad Supply Co., 244 U. S. 294	8
Johnson Co. v. Wharton, 152 U. S. 252	7
Sou. Pac. R. R. Co. v. U. S., 168 U. S. 1	5, 8
State of Oklahoma v. State of Texas, 256 U. S. 70	9
Watson v. Jones, 13 Wall. 679	15
Wilson's Executor v. Deen, 121 U. S. 525	9, 10

Statutes Cited.

D. C. Code, Section 984	2
D. C. Code, Section 1002	2

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 600

KEZIAH REED, GEORGIANA R. SIMPSON, LILLIAN M. H. REDDING, INFANT, BY HER NEXT FRIEND, LEWIS H. REDDING; MARGARET M. REDDING, INFANT, BY HER NEXT FRIEND, LEWIS H. REDDING, ET AL., PETITIONERS,

vs.

LORENZO ALLEN, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show and represent unto Your Honors that:

1. In June, 1926, your petitioners brought their action in ejectment against respondent, Lorenzo Allen, in the Supreme Court of the District of Columbia (R. 6). Judgment for petitioners was entered in August, 1926 (R. 6). Allen *omitted to pursue his remedy*

by appeal from that final judgment (R. 7) and petitioners were, more than five years ago, put into possion of the real estate involved by the usual process in such cases (R. 16).

2. The statute then and now in force in the District of Columbia declares that

> "Any final judgment rendered in an action of ejectment shall be conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action" (D. C. Code, Section 1002).

3. In December, 1927, said Lorenzo Allen, who had acquired no new title since the judgment in the former action, brought the present action in ejectment against your petitioners' tenant involving precisely the same real estate (R. 1). Your petitioners, having been substituted for their tenant as parties defendant (R. 5) in accordance with the statute (D. C. Code, Sec. 984). interposed the plea of *res judicata* based upon the aforesaid judgment of 1926 (R. 5). By replication to this plea Allen set forth the proceedings and decree upon mandate of the Court of Appeals in a certain *collateral* equity cause (R. 9-17) hereinafter mentioned. Upon demurrer to the replication (R. 18) petitioners' plea of *res judicata* was sustained (R. 19) and judgment entered in their favor (R. 21). From *this* judgment Allen appealed (R. 21). On December 7, 1931, the Court of Appeals of the District reversed the last-mentioned judgment, and it is this decision of the Court of Appeals which petitioners here seek to have reviewed.

The ground of reversal of this second judgment in ejectment was that the former judgment between the same parties, notwithstanding no appeal was taken from it, did not constitute a bar because of the *later ruling* of the Court of Appeals in the collateral suit above referred to (R. 25-27).

4. The nature of said collateral equity suit and the proceedings therein were as follows:

About nine years ago one Thomas Walker filed in the Supreme Court of the District a bill of interpleader as the custodian of rent-money collected by him from certain real estate (R. 13). Petitioners and respondent Allen were made defendants as the adverse claimants to said rents and required to interplead (R. 10). Upon final hearing, in July, 1925, a decree was entered in favor of petitioners (R. 10, 13). Appeal was taken by Allen and, in January, 1927 (R. 13), the Court of Appeals reversed the decree (R. 16).

The adjudication of the conflicting claims in said equity cause turned (both in the trial and appellate courts) upon the interpretation of the will of one Silas Holmes (R. 13), who, many years before, had died seized of the real estate from which said rents were derived (R. 13). Petitioners, on the one side, and respondent Allen, on the other, claimed the rents in Walker's hands as devisees in remainder under said will (R. 9, 13). The life tenants both had died prior to the filing of said interpleader suit (R. 12).

The real estate from which the said rents were derived is the same real estate which was the subject of litigation in the two ejectment suits aforesaid (R. 6, 9, 13).

5. For the sake of clearness, petitioners here state in sequence the essential events in the three suits hereinbefore described:

July, 1925.—Decree in trial court in petitioners' favor in interpleader suit involving rents; appeal noted and perfected (R. 10, 13).

June, 1926.—Ejectment for possession of real estate instituted by petitioners against Allen (R. 6).

August, 1926.—Judgment for petitioners in ejectment action. *No appeal taken* (R. 6, 7).

August, 1926.—Possession of real estate delivered to petitioners under writ of possession in ejectment suit (R. 16).

January, 1927.—Decision of Court of Appeals reversing *decree in interpleader suit* (R. 16).

May, 1927.—Decree upon mandate of Court of Appeals in interpleader suit (R. 16).

December, 1927.—Ejectment (second action) for possession of same real estate, instituted by Allen (R. 1).

April, 1930.—Judgment for petitioners in second ejectment suit; appeal noted and perfected (R. 21).

December, 1931.—Decision of Court of Appeals reversing judgment in second ejectment suit (R. 24-27).

6. The question here sought to be reviewed by your petitioners is whether the decision on appeal from the judgment in the second ejectment suit, which refuses to recognize and uphold as final and conclusive the judgment entered more than five years before in the first ejectment suit, can be legally sustained.

The Court of Appeals' decision is that, notwithstanding the acquiescence of respondent Allen in the judgment in the first ejectment suit, he is nevertheless *not bound* by it, but may maintain this second ejectment suit because of the intervening ruling of the Court of Appeals in the collateral interpleader suit. In other words, when (through the appellate court's subsequent ruling in a wholly collateral suit) it appears that a final judgment in ejectment, unappealed from and acquiesced in, had been erroneous, the losing party may again litigate the same issue with the same parties in a second ejectment action.

7. The reasons which your petitioners respectfully advance for the granting by Your Honors of the writ of certiorari as herein prayed are:

(1) That the Court of Appeals has decided erroneously a question of great and general importance;

(2) That such decision, if permitted to stand as a precedent will tend to destroy the doctrine of *res judicata* which this Court has declared to be "essential to the maintenance of social order" (*Sou. Pac. R. R.* v. *U. S.*, 168 U. S. 1, 48);

(3) That such decision, if permitted to stand as a precedent, will unsettle long-established law with respect to the conclusiveness of judgments;

(4) That the Court of Appeals has not given effect to, but wholly ignored, applicable decisions of this Court relating to the doctrine of *res judicata*.

WHEREFORE your petitioners pray the allowance of a writ of certiorari to the Court of Appeals of the Dis-

trict of Columbia in this case, there entitled *Lorenzo Allen, Appellant,* v. *Keziah Reed et al., Appellees,* No. 5246, that said cause may be reviewed and determined by this Court, and that the judgment of the said Court of Appeals may be reversed and set aside, and for such further relief and remedy in the premises as this Court may deem meet and proper.

LILLIAN M. H. REDDING,
Infant.

MARGARET M. REDDING,
Infant.

By J. WILMER LATIMER,
Their Guardian ad Litem.

GEORGIANA R. SIMPSON,
For Herself and on Behalf of the Other Adult Petitioners.

WALTER C. CLEPHANE.
GILBERT L. HALL,
Counsel for Adult Petitioners.

BRIEF IN SUPPORT.

Counsel bring this petition with confidence, first, because they believe that the most cursory examination will satisfy the Court that the decision of the Court of Appeals was erroneous, and, second, because that decision refused to recognize the conclusiveness of a judgment and the binding decisions of this Court. If lawyers or laity find that they cannot rely upon the conclusiveness of judgments, they must feel that the foundations of the law are crumbling beneath their feet.

The applicable code provision, quoted in the petition (p. 2), is positive in declaring that a final judgment in ejectment shall be conclusive between the parties. This statute thus abrogated the common-law doctrine which permitted successive ejectment actions between the same parties involving the same issue, and clearly established a contrary rule.

In this case the Court of Appeals has declared a final judgment in ejectment to be of no effect. The reasons given in the Court's opinion (R. 24-27) will be adverted to presently.

Whenever this Court has had occasion to speak of the estoppel by judgment, it has spoken in no uncertain terms. Brief quotations from a few illustrative cases follow:

Johnson Co. v. *Wharton*, 152 U. S. 252:

> "The inquiry as to the conclusiveness of a judgment in a prior suit between the same parties can only be whether the court rendering such judgment—whatever the nature of the

question decided, or the value of the matter in dispute—had jurisdiction of the parties and the subject-matter, and whether the question, sought to be raised in the subsequent suit, was covered by the pleadings and actually determined in the former suit'' (p. 261).

Southern Pacific R. R. Co. v. *U. S.*, 168 U. S. 1:

"The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; * * * This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them'' (p. 48).

Hart Steel Co. v. *Railroad Supply Co.*, 244 U. S. 294:

"This doctrine of *res judicata* is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and private peace', which should be cordially regarded and enforced by the courts to the end that rights once established by the final

> judgment of a court of competent jurisdiction shall be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect'' (p. 299).

No appeal was taken by respondent Allen from the adverse final judgment in the first ejectment suit (R. 7, 16). In the collateral (interpleader) case, the appellate court's interpretation of the Silas Holmes will was not handed down for many months after the ejectment judgment had been entered and petitioners put in possession. Tested by this later interpretation it may be admitted that the ejectment judgment was erroneous. But that does not at all affect its finality and conclusiveness. As this Court said in *State of Oklahoma* v. *State of Texas*, 256 U. S. 70:

> ''The matter being *res judicata*, as the result of the decree in the former suit, it is of no consequence whether it was correctly decided or not'' (p. 93).

It is not necessary to cite decisions of other courts to the effect that the failure to assert rights in a suit in which a judgment is obtained, either through ignorance of law or of facts, or through negligence or misconduct of counsel, does not affect the estoppel, and that, so long as the judgment remains unappealed from and in full force, the fact that it may have been erroneous does not detract from its effect as a bar to further suits upon the same cause of action.

The opinion in *Oklahoma* v. *Texas, supra*, and the following quotations from two other cases in this Court make the above principles clear. In *Wilson's Executor*

v. *Deen*, 121 U. S. 525, which is quite in point on the facts, the Court said:

> "Fraud in procuring the lease, upon which this action is brought, was the point in issue in the action in the marine court between the same parties, and it having been found by the verdict of the jury against the plaintiff, and judgment having been rendered upon that finding, the fact thus established must necessarily defeat any subsequent action upon the same instrument between those parties. The effect of the judgment is not at all dependent upon the correctness of the verdict or finding upon which it was rendered. It not being set aside by subsequent proceedings, by appeal or otherwise, it was equally effective as an estoppel upon the point decided, whether the decision was right or wrong" * * * (p. 534).

and in the earlier case of *Cromwell* v. *County of Sac*, 94 U. S. 351, the Court quoted with approval from *Henderson* v. *Henderson*, 3 Hare 100, as follows:

> "In trying this question, I believe I state the rule of court correctly, that when a given matter becomes the subject of litigation in and of adjudication by a court of competent jurisdiction, the court requires the parties to bring forward their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in controversy, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of the case" (p. 358).

Brief references will be made now to the grounds stated in the opinion of the Court of Appeals for the ruling which is here sought to be reviewed.

1. Strangely, the appellate court treats the appeal from the decree in the collateral (interpleader) suit as if it had been an appeal from the judgment in the first action in ejectment, and bases its conclusion upon this supposed fact. It said in its opinion, after quoting the Code section in question (Petition, p. 2):

> "It will be observed that this relates to final judgments. *A judgment appealed from is not a final judgment.* It is merely an adjudication of the inferior court, the finality of which depends upon the action of the superior court" (R. 26). (Italics ours.)

Any reader of the opinion (R. 24-27) would almost certainly infer from this that there had been an appeal from the first ejectment judgment. But it has already been shown by the record that *there was no appeal taken* (R. 7, 16).

2. The appellate court falls into the further error of treating the decree in the interpleader suit as a *decree vesting title* to the real estate.

That the interpleader decree *did not* create or vest title to the real estate is obvious. The only possible authority of the Court in the interpleader suit was to determine who was entitled to the money in Walker's hands. This involved the interpretation of Silas Holmes' will for the purpose of ascertaining in whom was the title in remainder, for such remainderman was clearly entitled to rent-money collected by Walker

after the life tenant's death. The trial court's construction of the will gave the money to petitioners as devisees under the will (R. 10). The appellate court's construction gave it to respondent Allen as heir-at-law (R. 16). In either view the *title to the land must have vested at the testator's death* (which occurred about 30 years before—R. 13) or as soon after his death as the claimants came into being. Therefore the equity court could not have vested title to the land by its decree in the interpleader suit, and the fact is that neither the first decree (R. 10) nor the decree upon mandate (R. 16, 17) attempted to do so.

It is thus made evident that the appellate court was entirely in error in declaring in its opinion that:

> "The judgment in the first ejectment proceeding was dependent entirely upon the *title acquired through the decree* of the Supreme Court of the District of Columbia" (R. 26). (Italics ours.)

3. The third fundamental error of the appellate court is closely related to the second. It is that the appellate court predicated its decision upon the unjustified premise that petitioners had *based their ejectment action upon the trial court's decree* in the interpleader suit. The opinion, in stating the case, says (R. 25) that petitioners "instituted an action against the appellant *wholly based on the decree* then on appeal." (Italics ours.) Throughout the opinion are other frequent references to the same supposed fact, and it is plain from the court's language that it regarded such supposed fact as a controlling one.

But the record shows that petitioners' ejectment action was based, as of course it must have been, upon the title which they had long asserted *as devisees under the Silas Holmes will* (R. 9). Manifestly the judgment therein could not have been based, nor in any way dependent, upon a decree which vested *no title* to the real estate in them. Respondent Allen's replication in the present action (upon which he elected to stand after demurrer was sustained) avers that in the former ejectment action petitioners "as their source of title and right to possession relied solely" upon Silas Holmes' will, and upon the trial court's decree in the interpleader suit (R. 9). This is the only statement in the record upon this subject and it shows that the present petitioners there asserted and relied upon a *title derived from the will* and very properly availed themselves of the interpretation given the same will by a justice of the same court in a collateral proceeding in which the will had also been involved. *But even if petitioners in that action had erroneously relied upon the trial court's decree in the collateral suit, as their source of title, respondent could not by a second action in ejectment attack the erroneous judgment from which he omitted to appeal.*

4. The appellate court further, in its opinion, says that:

> "The first ejectment suit was merely *in aid of the first decree*" (R. 26). (Italics ours.)

and also:

> "When that decree was reversed, 'vacated, set aside and for naught held', the judgment for

possession shared the fate of the decree upon which reliance was placed for title" (R. 26).

It is impossible to find any justification either in the record or in the law for declaring that this common law action in ejectment was or could have been in aid of the decree for the payment of money in the interpleader suit.

5. The appellate court's opinion concludes thus:

> "It was within the power of the equity court upon the mandate of this court to have ordered restitution of possession in its decree. Opposing this power it would be trifling with justice to hold that the court was without power to grant restitution in ejectment" (R. 27).

But, it may be asked, what possible power or jurisdiction had the equity court, in the collateral interpleader suit over money, to enter any order or decree which could disturb the final judgment long before entered by the law court in ejectment, or the possession of the real estate which had been secured by that judgment? Of course, upon the reversal of the equity decree, the trial court could and would have required the prevailing parties below to surrender the money, which alone was the subject of that suit, had such money been paid to them pending the appeal.

As indicated by the foregoing quotations from the appellate court's opinion, it wholly ignored the distinct nature of the remedies invoked in the ejectment action and the interpleader proceeding, respectively, and the exclusive character of the jurisdiction in such cases. Because in both it happened that the interpre-

tation of the same will was involved, the appellate court fell into the fundamental error of treating the judgment in the one case as dependent upon the decree in the other. The following apt language quoted by this Court in *Watson* v. *Jones*, 13 Wall. 679, which was directly called to the appellate court's attention in petitioners' brief there, should have prevented any such confusion:

> "It is not true that a court, having obtained jurisdiction of a subject matter of suit and of parties before it, thereby excludes all other courts from the right to adjudicate upon other matters having a very close connection with those before the first court, and in some instances requiring the decision of the same question exactly. In examining into the exclusive character of the jurisdiction in such cases, we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits" (p. 716).

The only ground upon which respondent Allen sought to avoid the bar of the former judgment was that he had *acquired a new title* since the first ejectment judgment (R. 25) *by virtue of the decree upon mandate of the appellate court in the interpleader suit*. The learned *trial* justice in his memorandum opinion rejected this contention, saying:

> "I do not think that the plaintiff sets up any title in the present suit acquired since the former suit * * * He failed to appeal from the former judgment and cannot now set up any title which he had at that time" (R. 19).

With that conclusion the appellate court disagreed, holding that the decree upon its mandate in the interpleader suit over the rent money (R. 17) *constituted a new title* to the real estate in Allen! It has already been shown that such could not have been the effect of said decree, and reference to its terms (R. 17) will show clearly that it did not *attempt to vest or create* title to the land in anyone.

To further test the main question here involved, suppose petitioners' ejectment action had been instituted after (instead of long before) the ruling by the Court of Appeals in the interpleader suit, and that the trial court had erroneously given judgment for petitioners notwithstanding that ruling, what would have been respondent Allen's remedy? Obviously his only remedy would have been an appeal from that judgment. He could not acquiesce therein and later on institute a second ejectment suit because of the error in entering the prior judgment.

The case made by the record comes simply to this: Respondent Allen had his day in court in the first ejectment action. He had a plain legal remedy by appeal from the adverse final judgment therein and omitted to avail himself of it. By the decision here sought to be reviewed the Court of Appeals has given him a remedy which is opposed to settled principles repeatedly declared by this Court, as well as to the terms of an unambiguous statute.

If we are not mistaken in our view that the decision is wrong, that it contradicts the plainest decisions of this Court, and that it tends to weaken if not to destroy one of the fundamentals of the law, then the fact

that the decision was by a unanimous court only makes the situation the more serious and calls the more loudly for the intervention of this Court.

In conclusion, it is respectfully submitted that the uncertainty as to the conclusiveness of judgments which would inevitably follow if the appellate court's decision in the present case is allowed to stand, justifies petitioners in praying this review by your Honors.

J. WILMER LATIMER,
Guardian ad Litem for Infant Petitioners, in Propria Persona.
WALTER C. CLEPHANE,
GILBERT L. HALL,
Counsel for Adult Petitioners.